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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**

9 MARGEAUX GREEN, an individual,
10
11 Plaintiff,

12 v.

13 CITY OF SEATTLE, a Washington
14 municipal corporation; BALLARD
15 TERMINAL RAILROAD COMPANY,
16 LLC, a Washington limited liability
17 company,

18 Defendants.

No.

NOTICE OF REMOVAL

19 **TO: CLERK OF THE COURT**

20 **AND TO: PLAINTIFF MARGEAUX GREEN**

NOTICE OF REMOVAL

21 PLEASE TAKE NOTICE that Defendant Ballard Terminal Railroad
22 Company, LLC ("BDTL") hereby removes to the United States District Court for
23 the Western District of Washington the matter filed in King County Superior Court
24 under Cause No. 22-2-02927-7 SEA, styled *Margeaux Green v. City of Seattle;*
25 *Ballard Terminal Railroad Company, LLC*. See 28 U.S.C. § 1446(a).

26 A true and correct copy of the Summons and Complaint are attached as
27 **Exhibit A** and **Exhibit B** to this Notice of Removal. The state court Complaint
28

1 was filed on March 1, 2022, and service on behalf of both Defendants was accepted
2 on March 8, 2022. See 28 U.S.C. § 1446(b)(1).

3 **FEDERAL QUESTION**

4 The Complaint provides that Plaintiff was crossing a railroad track on her
5 bicycle when her tire became lodged in the railroad track and ejected her from her
6 bicycle. The stated cause of action is Negligence, under Washington law.

7 District courts shall have original jurisdiction of all civil actions arising
8 under the laws of the United States. 28 U.S.C. § 1331.

9 Normally, a case may not be removed to federal court on the basis of a federal
10 defense, including the defense of preemption. *Hunter v. Philip Morris USA*, 582
11 F.3d 1039, 1042–1043 (9th Cir. 2009). However, an exception is when Congress “so
12 completely preempt[s] a particular area that any civil complaint raising this select
13 group of claims is necessarily federal in character.” *B&S Holdings, LLC v. BNSF*
14 *Ry. Co.*, 889 F.Supp.2d 1252, 1255 (E.D. Wash. 2012) (citing *Metropolitan Life Ins.*
15 *Co. v. Taylor*, 481 U.S. 58, 63–64 (1987)).

16 Under complete preemption, if “the pre-emptive force of a [federal] statute is
17 so ‘extraordinary’ that it ‘converts an ordinary state common-law complaint into
18 one stating a federal claim for purposes of the well-pleaded complaint rule,’” then
19 “any claim purportedly based on that pre-empted state law is considered, from its
20 inception, a federal claim, and therefore arises under federal law.” *B&S Holdings,*
21 *LLC v. BNSF Ry. Co.*, 889 F.Supp.2d at 1255 (quoting *Caterpillar Inc. v. Williams*,
22 482 U.S. 386, 393 (1987)).

23 “The question in complete preemption analysis is whether Congress
24 intended the federal cause of action to be the exclusive cause of action for the
25 particular claims asserted under state law.” *B&S Holdings*, 889 F.Supp.2d at 1256
26 (quoting *Elam v. Kansas City Southern Ry. Co.*, 635 F.3d 796, 803 (5th Cir. 2011)).
27

1 “The Interstate Commerce Act, ch. 104, 24 Stat. 379 (1887), which, as
 2 amended, still governs federal regulation of railroads, has been recognized as
 3 among the most pervasive and comprehensive of federal regulatory schemes.” *B&S*
 4 *Holdings*, 889 F.Supp.2d at 1256 (quoting *City of Auburn v. United States*, 154 F.3d
 5 1025, 1029 (9th Cir.1998)). “For more than a century, the Supreme Court has made
 6 it clear that under the U.S. Constitution’s Supremacy Clause (Art. VI, cl. 2), state
 7 laws or regulations that are inconsistent with the agency’s plenary authority or
 8 with the Congressional policy reflected in the Interstate Commerce Act are
 9 preempted.” *Id.*

10 The Federal Railroad Safety Act provides, in pertinent part:

11 (a) National Uniformity of Regulation—

12 (1) Laws, regulations, and orders related to railroad safety and
 13 laws, regulations, and orders related to railroad security shall be
 nationally uniform to the extent practicable.

14 (2) A State may adopt or continue in force a law, regulation, or
 15 order related to railroad safety or security until the Secretary of
 Transportation (with respect to railroad safety matters), or the
 16 Secretary of Homeland Security (with respect to railroad security
 17 matters), prescribes a regulation or issues an order covering the
 subject matter of the State requirement. A State may adopt or
 18 continue in force an additional or more stringent law, regulation,
 or order related to railroad safety or security when the law,
 regulation, or order—

19 (A) is necessary to eliminate or reduce an essentially local
 safety or security hazard;

20 (B) is not incompatible with a law, regulation, or order of
 the United States Government; and

21 (C) does not unreasonably burden interstate commerce.

22 (b) Clarification Regarding State Law Causes of Action.—

23 (1) Nothing in this section shall be construed to preempt an action
 24 under State law seeking damages for personal injury, death, or
 property damage alleging that a party—

25 (A) has failed to comply with the Federal standard of care
 established by a regulation or order issued by the Secretary
 of Transportation (with respect to railroad safety matters),
 26 or the Secretary of Homeland Security (with respect to
 27

1 railroad security matters), covering the subject matter as
 2 provided in subsection (a) of this section;
 3 (B) has failed to comply with its own plan, rule, or standard
 4 that it created pursuant to a regulation or order issued by
 5 either of the Secretaries; or
 6 (C) has failed to comply with a State law, regulation, or
 7 order that is not incompatible with subsection (a)(2).

8 49 U.S.C. § 20106 – Preemption.

9 Thus, the FRSA expressly preempts state and local regulations as to railroad
 10 safety, and also preempts state common law tort claims, including negligence. See
 11 *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 662 – 664 (1993); *Norfolk Southern*
 12 *Ry. Co. v. Shanklin*, 529 U.S. 344 (2000); *Murrell v. Union Pacific R.R. Co.*, 544 F.
 13 Supp.2d 1138, 1148 (D. Oregon 2008). Section 20106 will preempt any State law,
 14 whether statute or common law, that concerns the same subject matter as the
 15 regulations in the rule. *Id.*

16 The Interstate Commerce Commission Termination Act of 1995 (“ICCTA”), 49
 17 U.S.C. § 10501 *et seq.*, preempts state regulation and common law claims
 18 concerning the “construction, acquisition, operation, abandonment, or
 19 discontinuance of spur, industrial, team, switching, or sidetracks or facilities.” *B&S*
 20 *Holdings, LLC*, 889 F.Supp.2d at 1259-61 (quoting 49 U.S.C. § 10501(b)(2)).

21 In the present matter, 49 U.S.C. § 20106 and 49 U.S.C. § 10501 completely
 22 preempt a state common law negligence claim pertaining to the design,
 23 maintenance, and safety of a rail – pathway crossing, and convert the claim, in
 24 effect, to a federal cause of action. See *B&S Holdings, LLC*, 889 F.Supp.2d at 1255-
 25 56.

26 **CONSENT TO REMOVAL**

27 Co-defendant City of Seattle consents to this removal.

SERVICE OF NOTICE

Notice of this removal is being filed with King County Superior Court and is being provided to all parties. 28 U.S.C. § 1446(b)(1).

Submitted this 24th day of March, 2022,

KSB LITIGATION, P.S.

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